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10/766,476	01/29/2004	Peter J. Hansen	19838.04	3731

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EXAMINER

HAWK, NOAH CHANDLER

ART UNIT PAPER NUMBER

3637

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/766,476	<b>Applicant(s)</b> HANSEN, PETER J.	
	<b>Examiner</b> Noah C. Hawk	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/29/04</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in US Patent 5967056 in view of Adedji et al. in US Publication 2001/0031807.

- a. Regarding Claim 1, Plante discloses a pallet (10) comprising a molded (see Plante, Column 6, lines 11-13, "or molded plastic") upper member (20) and a molded (see Plante, Column 6, lines 11-13, "or molded plastic") lower member (50) and means for interlocking the upper and lower members (the combination of 42 and 72) in order to form a pallet. Plante fails to disclose that the pallet is made of a rubber composite. Adedji et al. discloses a pallet constructed of a rubber composite (see Adedji et al., paragraph 0037, "rubber-modified polystyrenes). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Plante by using a rubber composite as taught by Adedji et al. in order to satisfy the UL protocol for pallets (as stated by Adedji et al.).

b. Regarding Claim 2, as stated above, Plante in view of Adedji et al. disclose all of the elements of Claim 1 including a rubber composite pallet. Adedji et al. further discloses that the composite is at least 20% rubber (see Adedji et al., paragraph 0064: "the rubber modified resins comprise the rubber modified graft copolymer at a level of from 5% to 100% by weight). It would have been obvious to one of ordinary skill in the art at the time of invention been to modify the device of Plante in view of Adedji et al. by using a 20% rubber composite as taught by Adedji et al. in order to provide a pallet that further meets the UL protocol for pallets (as stated by Adedji et al.).

c. Regarding Claim 6, as stated above, Plante in view of Adedji et al. disclose all of the elements of Claim 1 including a rubber composite pallet. Plante further discloses that the upper member comprises a plurality of planks (30) and a plurality of crossbeams (40), the bottom of the planks being attached to the top of the crossbeams and said lower member comprises a plurality of planks (60) and a plurality of crossbeams (70), the top of the planks being attached to the bottom of the crossbeams, the crossbeams of the upper and lower members being equal in number (Best seen in Plante, Figure 4). Plante further discloses that said means for interlocking the two members comprises a notch defined in the crossbeams of the lower member and a holding wedge formed on the upper member. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. by using a notch and holding wedge interlocking means as taught by Plante but having the

notched defined in the crossbeams of the upper members and the holding wedges defined on crossbeams of the lower member in order to allow for easier alignment when positioning the two members to be connected.

d. Regarding Claim 9, as stated above, Plante in view of Adedji et al. disclose all of the elements of Claim 6 including a rubber composite pallet. Adedji et al. further discloses that the composite is at least 20% rubber (see Adedji et al., paragraph 0064: "the rubber modified resins comprise the rubber modified graft copolymer at a level of from 5% to 100% by weight). It would have been obvious to one of ordinary skill in the art at the time of invention been to modify the device of Plante in view of Adedji et al. by using a 20% rubber composite as taught by Adedji et al. in order to provide a pallet that further meets the UL protocol for pallets (as stated by Adedji et al.).

3. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in view of Adedji et al. as applied to Claim 1 above and further in view of Edson in US Patent 6495635. As stated above, Plante in view of Adedji et al. discloses all of the elements of Claim 1 including a rubber composite pallet, but fails to disclose that the pallet contains recycled rubber or a filler material and the ratios of the ingredients of the composition. Edson discloses the use of recycled rubber as an ingredient in pallet construction (see Edson, Abstract, line 3 "plastic pallets" and Edson, Column 1, lines 45-55 "scrap from rubber seals or car parts"), but fails to teach the use of a filler material. Adedji et al. discloses the use of a plastic filler material (see Adedji et al., paragraph 0134, "fillers, including... plasticizers"). It would have been obvious to one of

ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. by using recycled rubber as a component as taught by Edson and plastic filler as taught by Adedji et al. in order to make a product that is environmentally responsible and has the plastic properties the artisan prefers. In addition, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. and Edson by mixing the components so that the rubber composite is composed of about twenty pounds of recycled rubber, about ten pounds of natural rubber, about five pounds of sulfur and about ten pounds of filler material, since the applicant has not disclosed that having the ingredients mixed in this specific ratio solves any particular problem or imparts any distinct desirable characteristic to the pallet and it appears that the pallet would perform equally well with a different mixture of the ingredients.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in view of Adedji et al. as applied to Claim 6 above and further in view of Taub in US Patent 4694962. As stated above, Plante in view of Adedji et al. discloses all of the elements of Claim 6 including a rubber pallet, but fails to disclose extended planks. Taub teaches a pallet with planks (186) on an upper surface extend beyond a periphery of all of the crossbeams (188, best seen in Taub, figure 12. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. by using planks that extend past the periphery of the crossbeams as taught by Taub in order to allow the user to move the pallet by engaging the extensions of the planks.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in view of Adedji et al. as applied to Claim 6 above and further in view of Walters et al. in US Patent 3842534. As stated above, Plante in view of Adedji et al. discloses all of the elements of Claim 6 including a rubber pallet, but fails to disclose a retaining wall. Walters et al. discloses a pallet with a retaining wall (12, 13) extending upward from a periphery of an upper member. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. by adding a retaining wall as taught by Walters et al. in order to prevent objects on the pallet from falling off when the pallet is moved.

6. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in view of Adedji et al. as applied to Claim 6 above and further in view of Edson in US Patent 6495635. As stated above, Plante in view of Adedji et al. discloses all of the elements of Claim 6 including a rubber pallet, but fails to disclose that the pallet contains recycled rubber or a filler material and the ratios of the ingredients of the composition. Edson discloses the use of recycled rubber as an ingredient in pallet construction (see Edson, Abstract, line 3 "plastic pallets" and Edson, Column 1, lines 45-55 "scrap from rubber seals or car parts"), but fails to teach the use of a filler material. Adedji et al. discloses the use of a plastic filler material (see Adedji et al., paragraph 0134, "fillers, including... plasticizers"). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. by using recycled rubber as a component as taught by Edson and plastic filler as taught by Adedji et al. in order to make a product that is environmentally

responsible and has the plastic properties the artisan prefers. In addition, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. and Edson by mixing the components so that the rubber composite is composed of about twenty pounds of recycled rubber, about ten pounds of natural rubber, about five pounds of sulfur and about ten pounds of filler material, since the applicant has not disclosed that having the ingredients mixed in this specific ratio solves any particular problem or imparts any distinct desirable characteristic to the pallet and it appears that the pallet would perform equally well with a different mixture of the ingredients.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in view of Adedji et al. as applied to Claim 1 above and further in view of LeTrudet in Us Patent 6029583. As stated above, Plante in view of Adedji et al. discloses all of the elements of Claim 1 including a rubber pallet with planks on upper and lower members, but fails to disclose a support grid on each half of the pallet, blocks acting as connecting members or an interlocking means having a notch and holding wedge arrangement. LeTrudet teaches a pallet with an upper member having a plurality of blocks (28, each pair of legs is considered one "block" as they both interact with a single block on the lower member) and a support grid (26), a lower member having a plurality of blocks (42) and a support grid (40), the blocks in the upper and lower members being equal in number and means for interlocking the two halves comprising at least one notch (34) formed in the side of each of the blocks of the upper member and a holding wedge (48) formed on the side of each of the blocks of the lower member, the notch and wedge

forming a snap fit to interlock the upper and lower members. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. by using the support grid and block connectors taught by LeTrudet in order to provide a pallet a more reinforced upper and lower loading surface and to allow a user to approach the pallet with a lifting device from any side.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in view of Adedji et al. and LeTrudet as applied to Claim 13 above and further in view of Taub. As stated above, Plante in view of Adedji et al. and LeTrudet discloses all of the elements of Claim 13 including a rubber pallet, but fails to disclose extended planks. Taub teaches a pallet with planks (186) on an upper surface extending beyond a periphery of all of the crossbeams (188, best seen in Taub, figure 12. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. and LeTrudet by using planks that extend past the periphery of the crossbeams as taught by Taub in order to allow the user to move the pallet by engaging the extensions of the planks.

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in view of Adedji et al. and LeTrudet as applied to Claim 13 above and further in view of Walters et al. As stated above, Plante in view of Adedji et al. and LeTrudet discloses all of the elements of Claim 13 including a rubber pallet, but fails to disclose a retaining wall. Walters et al. discloses a pallet with a retaining wall (12, 13) extending upward from a periphery of an upper member. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et

al. and LeTrudet by adding a retaining wall as taught by Walters et al. in order to prevent objects on the pallet from falling off when the pallet is moved.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in view of Adedji et al. and LeTrudet as applied to Claim 13 above. As stated above, Plante in view of Adedji et al. and LeTrudet teaches all of the limitations of Claim 13 including a rubber composite pallet. Adedji et al. further discloses that the composite is at least 20% rubber (see Adedji et al., paragraph 0064: "the rubber modified resins comprise the rubber modified graft copolymer at a level of from 5% to 100% by weight"). It would have been obvious to one of ordinary skill in the art at the time of invention been to modify the device of Plante in view of Adedji et al. and LeTrudet by using a 20% rubber composite as taught by Adedji et al. in order to provide a pallet that further meets the UL protocol for pallets (as stated by Adedji et al.).

11. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plante in view of Adedji et al. and LeTrudet as applied to Claim 13 above and further in view of Edson in US Patent 6495635. As stated above, Plante in view of Adedji et al. and LeTrudet discloses all of the elements of Claim 13 including a rubber pallet, but fails to disclose that the pallet contains recycled rubber or a filler material and the ratios of the ingredients of the composition. Edson discloses the use of recycled rubber as an ingredient in pallet construction (see Edson, Abstract, line 3 "plastic pallets" and Edson, Column 1, lines 45-55 "scrap from rubber seals or car parts"), but fails to teach the use of a filler material. Adedji et al. discloses the use of a plastic filler material (see Adedji et al., paragraph 0134, "fillers, including... plasticizers"). It would have been obvious to

Art Unit: 3637

one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al. and LeTrudet by using recycled rubber as a component as taught by Edson and plastic filler as taught by Adedji et al. in order to make a product that is environmentally responsible and has the plastic properties the artisan prefers. In addition, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time of invention to modify the device of Plante in view of Adedji et al., LeTrudet and Edson by mixing the components so that the rubber composite is composed of about twenty pounds of recycled rubber, about ten pounds of natural rubber, about five pounds of sulfur and about ten pounds of filler material, since the applicant has not disclosed that having the ingredients mixed in this specific ratio solves any particular problem or imparts any distinct desirable characteristic to the pallet and it appears that the pallet would perform equally well with a different mixture of the ingredients.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mason, Huetteman et al., Braley, Nicholson, Shuert, Norrefeldt et al., Woods et al. '039 and Skinner disclose pallets. Duepree discloses a two-part pallet connected with a snap fit. Degerman and Zijp disclose processes for recycling rubber, including its use in pallets.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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